In the Matter Of:

DANIEL LOVELACE and HELEN LOVELACE Vs.

PEDIATRIC ANESTHESIOLOGISTS

ROBERT MARSCH

June 09, 2014

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R E P O R T I N G

22 North Second Street/Suite 303, Memphis, TN, 38103 (901) 527-1100

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1          IN THE UNITED STATES DISTRICT COURT
        FOR THE WESTERN DISTRICT OF TENNESSEE
2      _____

3    DANIEL LOVELACE and
     HELEN LOVELACE, Individually,
4    and as Parents of BRETT LOVELACE,
     Deceased,
5
          Plaintiff,
6
     Vs.                Case No.  2:13-cv-02289 dkv
7
     PEDIATRIC ANESTHESIOLOGISTS, PA;
8    BABU RAO PAIDIPALLI and MARK P.
     CLEMONS,
9
          Defendants.
10     _____

11


12        THE DEPOSITION OF ROBERT E. MARSCH, CPA
                     June 9, 2014
13                  VIDEO DEPOSITION

14

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16

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21      _____
22                  Madelyn E. Gray
                    Court Reporter
23           Suite 303, 22 N. Second Street
                Memphis, Tennessee 38103
24                 (901) 527-1100
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1   The deposition of Robert E. Marsch taken

2 on behalf of the Defendants, pursuant to

3 Consent, on June 9, 2014, beginning at

4 approximately 1:30 PM in the law offices of

5 Mark Ledbetter, 254 Court Avenue, Suite 305,

6 Memphis, Tennessee.

7   This deposition is taken in accordance

8 with the terms and provisions of the Tennessee

9 Rules of Civil Procedure.

10   All forms and formalities are waived,

11 and objections as to relevancy, materiality

12 and competency are reserved, to be presented

13 at or before the hearing. Objections as to

14 the form of the question must be made at the

15 time of the taking of the deposition. The

16 signature of the witness is not waived.

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MARSCH, ROBERT on 06/09/2014   3

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1   Q.   Well, other than the fact that, that you

2   understand that he was being home schooled, do

3   you know anything else about his grades or

4   educational accomplishments?

5   A.   Not specifically. No.

6   Q.   Why did you ask for that information

7   then?

8   A.   Well, for instance, if his grades were

9   such that it was, let's say he was seventeen

10 years old, had one, only one additional year

11 of high school, he was in college preparatory

12 classes, he was getting all A's and B's, then

13 I would probably make sure at least that I

14 included the calculation for a bachelors

15 degree. Or sometimes, I mean, you could even

16 make perhaps a justification if he had a

17 specific career set out. You could make a

18 justification for calculating an economic loss

19 based on a specific career aspiration. So I

20 typically will ask for that information. It

21 doesn't mean I always get it, but I'll often

22 ask for it.

23 Q.   Well, in this case, you didn't get it,

24 did you?

1   A.   No.

2   Q.   And so you didn't factor in his mental or

3   educational accomplishments, or lack thereof.

4   Is that a fair statement?

5   A.   That's correct. I treated him as the

6   average statistical individual and provided

7   earnings for a range of different educational

8   attainments.

9   Q.   In a broad sense, what are the, what are

10 these documents that are attached to the

11 e-mail that I just referenced?

12 A.   Those are work papers. They're entitled

13 age earnings. They are a set of documents for

14 different levels of educational attainment

15 that take statistical data on earnings by five

16 year intervals and enable me to compute what

17 the earnings would be at different ages.

18 Q.   All right. I believe that what you

19 handed me, it's says preliminary draft dated

20 5/14. Is this your most up-to-date report?

21 A.   It is.

22 Q.   Okay. And then there's a stack of

23 documents that has some handwritten

24 information on the front. Is that yours?

1   assumptions will be, would be applicable in

2   this case, do you?

3   A.   I'm not going to second guess the jurors'

4   decision with regard to where in that range of

5   earnings it would be appropriate to put Brett.

6   Q.   You could have made a fourth category --

7   well, at least another calculation based on

8   this statistical information involving a white

9   male who does not complete high school,

10 couldn't you?

11 A.   I could have. On the other hand, he is

12 home schooled. And so the statistics

13 available for those who are home schooled are

14 not readily available. In other words, I

15 don't have age earnings data for home schooled

16 children. I do know that home schooled kids

17 have a somewhat higher likelihood of attending

18 college than a high school kid. But I don't

19 have age earnings data for home schooled

20 children so I have not used it.

21 Q.   So the same source that you used for high

22 school graduate, some college, and college

23 graduate, it doesn't have that same

24 information regarding someone who has not

1   completed high school?

2   A.   Well, it has high school dropouts. But I

3   don't know how you become a home schooled

4   dropout. Assume that home schooled kids,

5   they, they take tests which gives them some

6   sort of certificate for essentially having

7   completed high school. But I don't know that

8   they are what I would call a high school

9   graduate.

10 Q.   Well --

11 A.   So I don't know what, you know, a home

12 schooled dropout would be. And I'm not sure

13 at all a home school dropout would be the same

14 set of earnings as that for a, you know, high

15 school drop out.

16 Q.   Well, if you have a GED, doesn't that at

17 least tell someone that that person has the

18 equivalent of a high school education?

19 A.   Yes. Some of those statistics combine

20 high school and GED educational attainments

21 together. That's correct.

22 Q.   Okay. But if someone drops out, whether

23 they're dropping out from home school or

24 dropping out from formal school, that's a high

1   school dropout, isn't it?

2   A.   I don't know that I would consider that.

3   I don't know -- you know, when you talk about

4   ninth grade and tenth grade, I don't know

5   where that comes within the home school side

6   of things. I'm simply not an expert on home

7   school, and there's not a whole lot of

8   statistics with regard to the educational

9   attainment of those who are home schooled that

10   I feel comfortable relying on it.

11   Moreover, if you look at the

12   statistics for high school, you're talking

13   about 70 percent. And you can compute them

14   based on the data that I gave you. But you're

15   looking at -- well, let's be specific.

16   If you look at those with a high

17   school education -- excuse me. Look at those,

18   I'm sorry, with a high school, ninth to

19   twelfth non-graduate. Out of 54 million

20   people, there's only 2.298 that have ninth to

21   twelfth non-graduate. And another 487,000

22   that have less than ninth grade.

23   So the numbers that you're talking

24   about, while you could have included a range

1   statistically, not only do I not have data for

2   home school, the statistical number of those

3   folks that don't graduate from high school is

4   insignificant compared to the other ranges for

5   which I've provided data.

6   Q.   All right. Do you think that it would be

7   advantageous, from a potential earnings

8   category, that Brett failed kindergarten, was

9   diagnosed with a learning disability, by the

10 time he was in the sixth grade he could only

11 read on a second grade level? Do you think

12 that that says a lot about his potential

13 earning --

14   MR. LEDBETTER: Object as to form.

15 You can answer.

16   THE WITNESS: I don't have an

17 opinion on that. That requires the expertise

18 from a medical perspective or a vocational

19 expert perspective, and I'm not trained in

20 either fields.

21 Q.   (BY MR. JOHNSON:) Well, you're using it

22 in part of your calculations there, a high

23 school graduate; correct?

24 A.   Correct.

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1   Q.   Okay. If you can't read but on a second

2   grade level, you're not going to be a high

3   school graduate, are you?

4   A.   Well, it depends on what age you're

5   talking about and how long you have to get

6   through high school. If you're talking about

7   someone who was in grade school or even in

8   ninth grade, they may well improve their

9   reading. And in fact, I would have to say at

10   the University of Arkansas, we have folks that

11   start college whose reading, they had to go

12   through remedial reading just to survive in

13   college at Fayetteville. And so I don't think

14   that's determinative of how far one would get

15   in their educational attainment.

16   Q.   It's not a good sign though, is it?

17   A.   Well, again, you're beyond my --

18   Q.   Would you answer me, sir, with you

19   answer. It's not a good sign, is it, if you

20   can't read but on a second grade?

21   MR. LEDBETTER: Object as to the --

22   THE WITNESS: At what age? If

23   you're saying at age, at sixth grade, if you

24   can't read --

1   Q.   (BY MR. JOHNSON:)   Yes.

2   A.   -- at seventh grade level.

3   Q.   Yes.

4   A.   No.   I would say if you, if your reading

5   is slow, that's not a good sign.   Whether it

6   means a difference in your earnings or not,

7   no.   I don't have an opinion.

8   Q.   If you wanted to, could you prepare a

9   fourth column on people who have not graduated

10 from high school?

11 A.   Yes.   You could look at the same data

12 that I looked at and calculate the age

13 earnings data for a ninth to twelfth grade, or

14 a non-ninth grade graduate as to -- as I said,

15 the statistical likelihood of that is not

16 great, but you certainly can calculate it.

17 Q.   All right.   And in round numbers, the

18 overall earning capacity of someone in that

19 category, one who has not graduated from high

20 school, is what, in the range of 25 percent

21 less than a high school graduate?

22 A.   Average earnings of a graduate, including

23 GED, is 42,157.   High school, ninth to twelfth

24 is 26,833.   So 25 percent less.   Actually, it

1   shows less than ninth grade as being an

2   average of 33,659, even greater than that with

3   a ninth to twelfth grade non-grad. But would

4   it be less? Yes. I haven't calculated

5   whether it would be 25 percent or not, but

6   that may be close.

7   Q.   In round numbers, that's good enough,

8   isn't it?

9   A.   That may be close. I would like to

10 calculate it, but I am -- that may be correct.

11 Q.   Well, you said 42,000 versus?

12 A.   28. Well, if you took the average of

13 them, you would be looking at the average of

14 33 and 26. So I would say 30, 42 to 30,

15 that's 12 divided by 42. Yeah. It would be

16 25 percent.

17 Q.   Okay. I'm not an economist, but I did

18 figure that up. Will you accept that?

19 A.   Yes.

20 Q.   Okay. Thank you. Now, in making your

21 calculations, you intended to replace what

22 Brett might have earned in his lifetime;

23 correct?

24 A.   I didn't intend to replace. I simply